

EXHIBIT E

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 1:02-cv-11315-MLW

IN RE SONUS NETWORKS, et al
Plaintiffs

vs.

GARY LYNN ROBERTS, et al
Defendants

For Motion Hearing Before:
Honorable Mark L. Wolf

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Friday, February 4, 2005

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
One Courthouse Way, Room 3507, Boston, MA 02210
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A P P E A R A N C E S

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2 4,000 share purchase, but they didn't play a game." If you
3 look at Mr. Roberts's certification, it's simply "since
4 December the 11th, I have made the following transactions," and
5 then he omits approximately 34,000 post-class-period purchases.

6 THE COURT: Well, let me --

7 MR. RUDMAN: May I tell you why he does that?
8 Because Mr. Weiss seemed to suggest to you, "well, this is just
9 an error. There can't be a motive." Of course, there's a
10 motive. The law firm, Milberg Weiss, that, if you please, is
11 somehow producing a certification that omits these post-class-
12 period purchases, is at the same time in front of Judge Newby
13 in the Harmon case saying post-class purchases are
14 disqualifying of plaintiffs. That's the motive.

15 THE COURT: Well, let me tell you where I am now.
16 I actually haven't focused on 23G and you say, "Oh, you know,
17 23G came in in the 2003 amendment." I don't know that.

18 MR. RUDMAN: Okay. I apologize.

19 THE COURT: If it's not a RICO case, I don't know
20 it, or a death penalty case.

21 MR. RUDMAN: Well, it's your Honor who corrected me
22 on the amendments the last time I was here.

23 THE COURT: Well -- all right. On this one? Not
24 on the 23G, I hope?

25 MR. RUDMAN: No, it was under the demise of

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1 conditional certification. It's about 23C(2).

2 THE COURT: I probably stopped reading at C. No,
3 but seriously, I mean, I pick these things up and I put them
4 down. Here's where I am at the moment. And I can always
5 change my mind. And I know you don't like Mr. Scibelli
6 either. But it seems to me that if I'm satisfied for the

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7 present purposes that the class period shouldn't end in October
8 30th, 2001 and I'm satisfied that Scibelli is an adequate
9 representative and I'm satisfied -- or not persuaded that
10 Roberts is an adequate representative, I could certify a class
11 and then I would still have a separate issue under 23G because
12 23G says that now I have to appoint class counsel. And I might
13 have a serious question as to whether either or both of these
14 firms are adequate counsel, but I could spin that question
15 off. I wouldn't certify the class. It's just the case is
16 stuck until I certify somebody to represent the class.
17 Analytically, is there anything wrong with that framework?

18 MR. RUDMAN: No, what you just said is right. I
19 wish I could convince you on the class period of Mr. Scibelli,
20 but I can't argue with your analytical framework.

21 THE COURT: Because that -- you know, I've got a
22 lot of help from my law clerk and, you know, now we're immersed
23 in this. I think I would like to take it as far as I can. I
24 don't regard things like this certification as a formality and
25 I really do want to know how this schedule came to be

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1 inaccurate and incomplete? Um, and I want to know whether it
2 was attached when Mr. Roberts signed it? And I want to know if
3 the Milberg firm prepared it, I want to know why it prepared it
4 this way?

5 But in terms of the analytical framework, do you have a
6 difference, you know -- in other words, I might certify the
7 class -- and that's what you came here and asked me to do, um,
8 and find that Scibelli is a minimally adequate representative
9 and then take some more information on whether you ought to be
10 appointed class counsel.

11 MR. WEISS: Your Honor, if I might?

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12 THE COURT: No, I'm sorry. Is the framework wrong?

13 MR. WEISS: Well, I have a point that goes to that,
14 I think, your Honor. 23G(1)(a), the provision that talks about
15 appointing class counsel doesn't apply in a PSLRA case. It
16 says, "Unless the statute provides otherwise." And then in the
17 comments, specifically -- (Turns.) -- specifically notes that
18 Paragraph 1A does not apply if the statute provides otherwise.

19 THE COURT: I'm sorry. Time out. What are you
20 reading from?

21 MR. WEISS: These are the comments to Federal Rule
22 23.

23 THE COURT: For the 2003 amendments?

24 MR. WEISS: Yes.

25 THE COURT: And which paragraph are you in?

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1 MR. WEISS: 23G(1)(a).

2 THE COURT: (Looks.) Well, okay. So it says:
3 "Paragraph 1A does not apply if the statute provides otherwise.
4 The PSLRA contained directives that bear on its selection of a
5 lead plaintiff in retention of counsel. This subdivision does
6 not purport to supersede or to affect the interpretation of
7 those provisions or any similar provisions of other
8 legislation." But this is the first time this is -- I mean, I
9 assume if I appoint somebody lead counsel -- and you can brief
10 this and tell me, "Too bad. I'm stuck. I've made a decision.
11 I can't change it." But, I mean, if I appointed you lead
12 counsel and if I thought that -- and I'm not saying you did
13 this. I'm talking hypothetically. But if I thought that your
14 firm had intentionally suborned perjury, for example, I doubt
15 that I would lack the authority to appoint replacement lead
16 counsel. I haven't researched it, but we would have to go back